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IN THE
Supreme Court of the United States
January Term, 2007

WILLIAM CRAWFORD, *ET AL.*,
Petitioners,
v.
MARION COUNTY ELECTION BOARD, *ET AL.*,
Respondents.

On Writ of *Certiorari* to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS [MYTH OF VOTER IMPERSONATION FRAUD]

STEVE BACHMANN
BRIAN MELLOR
ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW
1024 Elysian Fields Avenue
New Orleans, LA 70117
(504) 943-0044

DAVID OVERLOCK STEWART
Counsel of Record
ROPES & GRAY LLP
700 12th Street N.W.
Suite 900
Washington, D.C. 20005
(202) 508-4600

CAITLIN M. MOYNA
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10023
(212) 596-9000
Counsel for Amicus Curiae

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42 U.S.C. § 1973-1973aa-6 (1965) 5

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OTHER AUTHORITIES

ACVR Refers Ohio Voter Fraud Report to Department of Justice, PR NEWSWIRE, Mar. 24, 2005 18

American Center for Voting Rights, *Ohio Election Activities and Observations: Report to the United States House of Representatives Committee on House Administration* (Mar. 21, 2005) 9, 18

American Center for Voting Rights Legislative Fund, *Vote Fraud, Intimidation & Suppression in the 2004 Presidential Election* (Jul. 21, 2005) ..... *passim*

American Center for Voting Rights Website, http://web.archive.org/web/20050324112315/www.ac4vr.com/about/index.html 8

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Christopher Drew & Eric Lipton, *G.O.P. Anger in Swing State Eased Attorney's Exit,* N.Y. TIMES, Mar. 18, 2007 10

Cindi Andrews, *Alleged Fraudulent Voter Cards Scrutinized*, CINCINNATI ENQUIRER, Oct. 8, 2004 19

David Bowermaster, *McKay "Stunned" by Report on Bush*, SEATTLE TIMES, Mar. 13, 2007 11

David C. Iglesias, *Why I Was Fired*, N.Y. TIMES, Mar. 21, 2007 10

Employment Policies Institute, *Rotten ACORN: America's Bad Seed* (July 2006) 16

Eric Lipton & Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. TIMES, Apr. 12, 2007 ..... 12, 16

Frank Morris, *Attorneys Scandal May Be Tied to Missouri Voting*, National Public Radio, May 3, 2007 11

Greg Gordon, *GOP Links to Vote-Fraud Push*, MIAMI HERALD, July 1, 2007 10

Ian Urbina, *Panel Said to Alter Finding on Voter Fraud*, N.Y. TIMES, Apr. 11, 2007 ..... 7, 8

Jon Craig, *Magazine Inaccurately Uses "Dispatch" Material in Story*, COLUMBUS DISPATCH, Oct. 26, 2004 18

Joni James, *Voter Fraud Charges Collapse*, ST. PETERSBURG TIMES, Dec. 15, 2005 14

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Letter from Bradley J. Schlozman to Chairman Patrick J. Leahy (June 11, 2007), *available at* http://www.talkingpointsmemo.com /docs/schlozman-clarification/ 11

Letter from Jamey Koralewski to Douglas Haynam (Oct. 26, 2004) 17

Letter from Mark Rubick to Douglas Haynam (Oct. 26, 2004) 17

Lisa A. Abraham, *Voter Fraud Investigation Nets 1 Arrest*, BEACON J., Nov. 8, 2005 18

Lorraine C. Minnite, *The Politics of Voter Fraud* (Project Vote), *available at* http://projectvote.org/fileadmin/ProjectVote/Publications/Politics_of_Voter_Fraud_Final.pdf 5

Michael Isikoff, *Rove: A Moving Target*, NEWSWEEK, Apr. 9, 2007 10

Murray Waas, *The Scales of Justice*, NAT'L J., May 31, 2007 8

Pam Fessler, *Voter Fraud: A Tough Crime to Prove*, National Public Radio, Mar. 15, 2007 .. 10

Press Release, Fla. Dep't of Law Enforcement, *FDLE Investigates Statewide Voter Fraud* (Oct. 21, 2004) 13, 14

Robert Vitale, *Made-Up People*, COLUMBUS DISPATCH, June 2, 2004 19

Robert Vitale, *Two Fired Over Bogus Voter-Registration Forms*, COLUMBUS DISPATCH, June 3, 2004 19

Ryan Paul Haygood, *State Voter ID Bills Could Derail Civil Rights Successes*, SUN HERALD (Biloxi, MS), May 4, 2005 9

Sam Hananel, *Schlozman Resigns From Justice Department Post*, ASSOCIATED PRESS, Aug. 24, 2007 7

Steven Mintz, *Winning the Vote: A History of Voting Rights*, http://historynow.org/09_2004/historian1c.html 5

Terry Frieden, *Justice Official Revises Testimony in Voter-Fraud Case*, CNN.COM, June 13, 2007 11

Tom Zucco, *Signup Mistakes Blamed on Group*, ST. PETERSBURG TIMES, Oct. 4, 2004 16

Voter Fraud Lawsuits Against ACORN Dismissed, MIAMI TIMES, Dec. 21, 2005 14

Voter Registration Investigation One of Largest in Recent Years, ASSOCIATED PRESS, Sept. 23, 2004 18

WBNS-TV, *Election Fraud Cases Under Review*, Oct. 22, 2004 18

William Yardley, *Gonzales Bowed to Politics, a Former U.S. Attorney Says*, N.Y. TIMES, Mar. 21, 2007 ..... 10, 11

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Association of Community Organizations for Reform Now ("ACORN") respectfully submits this brief as *amicus curiae* in support of Petitioners.[1]

ACORN is a not-for-profit organization founded in 1970 which represents more than 350,000 member families in over 100 domestic and international cities. ACORN has two chapters in Indiana serving approximately 2,000 members. One of ACORN's goals is to increase civic participation by citizens existing on the outskirts of society. To that end, ACORN has sponsored hundreds of voter registration drives around the nation, resulting in the registration of over 1.5 million voters.

Indiana's Voter Identification ("ID") Law requires in-person voters to display government issued photo ID to poll workers on election day.[2] Low-income and homeless individuals are more likely to lack resources to obtain government issued photo ID, and the Indiana law will disproportionately prevent them from voting.[3]

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[1] Pursuant to Supreme Court Rule 37.6, the parties have consented to the filing of this *amicus curiae* brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

[2] Ind. Code § 3-11-8-25.1.

[3] *See* App. 3 ("No doubt most people who don't have photo ID are low on the economic ladder . . . .").

Therefore, ACORN has an interest in the outcome of this case, which could prevent thousands of the citizens it serves from voting.

The purported rationale for Indiana's Voter ID Law is to prevent individuals from fraudulently casting ballots by impersonating registered voters on election day. Similarly fanciful allegations have been made repeatedly against ACORN's voter registration efforts. This brief explains, based on ACORN's experiences of registering voters and defending against allegations of voter fraud, that much of the supposed concern about voter impersonation has been contrived to justify legislation that deters low-income citizens from voting.

SUMMARY OF ARGUMENT

The decision below relied heavily on the empirical guess that a significant number of individuals vote fraudulently by impersonating registered voters. This unsupported hypothesis has fueled a national campaign to adopt statutes – like the Indiana law at issue in this case – that appear to protect the integrity of the election process but are actually designed to suppress voter participation by low and middle-income voters. Because it works hard to register exactly those voters and help them vote, ACORN has been the target of unfounded charges of voter impersonation fraud. Before ruling on the important issue presented by this case, the Court should consider the persuasive evidence that the myth of voter impersonation fraud has been a means for deterring people from voting. ACORN

supports protections for the integrity of elections, but not against phantom dangers conjured up in order to reduce exercise of the franchise.

ACORN operates at the front lines of the voter registration effort. Because ACORN's registration drives can threaten incumbent politicians and parties, ACORN has been the target of much of the vote-restriction effort, which has included legislative retaliations aimed at vote suppression. The myth of voter impersonation fraud is a central justification for restrictive voting laws like the Indiana Voter ID Law. The use of such unfounded allegations to obstruct ACORN's voter registration in Florida and Ohio provides a cautionary illustration of how this myth can distort the critical intersection between the legal system and the electoral system.

Based only on the empirical guess that voter impersonation fraud might happen somewhere, at some time, the Indiana Voter ID Law cannot meet the test for voting restrictions of *Burdick v. Takushi*, 504 U.S. 428 (1992). Created to resolve an unproved problem, the Indiana statute generates no significant benefits that would justify the acknowledged burdens it places on voting. Consequently, it violates the First and Fourteenth Amendments to the United States Constitution.

ARGUMENT

I. The Indiana Statute Cannot Be Sustained Without a Finding of Substantial Voter Impersonation Fraud.

Indiana justifies its voter ID law solely as a remedy for voter impersonation fraud, that is, when a voter casts a ballot under a false identity.[4] Under *Burdick*, the statute's constitutionality turns on the balance between "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments" and "the precise interests put forward by the State" to justify the burden imposed, taking into consideration whether the State's interests "make it necessary to burden the plaintiff's rights."[5]

In sustaining the statute, the court of appeals relied heavily on concerns of voter impersonation fraud voiced by proponents of the law. The court applied a reduced standard to the statute because "[t]he purpose of the Indiana law is to reduce voting fraud, and voting fraud impairs the right of legitimate voters to vote by diluting their votes."[6]

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[4] *See* App. 6-7 ("The purpose of the Indiana [voter ID] law is to reduce voting fraud. . . . Without requiring a photo ID, there is little if any chance of preventing [in-person voter impersonation] fraud . . . ."); Brief of State Respondents in Opposition to the Petitions, at 3, *Crawford v. Marion County Election Bd.*, No. 07-21 (U.S. Aug. 6, 2007) ("It was against this backdrop of . . . nationwide reports of in-person voter fraud that the Indiana General Assembly enacted the Voter ID Law in 2005.").

[5] 504 U.S. at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780 (1983)). The Indiana statute deters individuals from voting altogether, while the Hawaii statute at issue in *Burdick* simply denied a voter the ability to write in a candidate's name in a jurisdiction where the standards for getting on the ballot were quite low. Accordingly, the interest threatened by the Indiana law is of much greater constitutional weight.

[6] App. 6.

Thus, it declined to apply a strict standard of review because "the right to vote is on both sides of the ledger."[7] If the concern for voter impersonation fraud is unfounded, or even materially overstated, the court below applied the wrong standard and came to the wrong outcome.

Elected officials have an interest in suppressing voting by groups not likely to vote for them. In close races, maximizing voter participation by candidates' supporters – and minimizing participation by their opponents – can have a decisive impact.[8] Consequently, vote suppression has assumed many forms in our history. Poll taxes and literacy tests are part of that ugly history.[9] Voter ID laws can be part of a twenty-first century

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[7] *Id.*

[8] The Indiana Voter ID Law was passed by Indiana's Republican-controlled legislature in 2005. As the court below noted, people "low on the economic ladder . . . are more likely to vote for Democratic than Republican candidates." App. 3.

[9] *See Harper v. Va. Bd. of Elections*, 383 U.S. 663, 666 (1966) (holding poll taxes unconstitutional); *Katzenbach v. Morgan*, 384 U.S. 641, 646-47 (1966) (holding that New York state could not impose an English literacy requirement on the right to vote); 42 U.S.C. § 1973- 1973aa-6 (1965) (outlawing literacy tests for voters); U.S. CONST. amend. XXIV (prohibiting states from denying the right to vote in federal elections because of failure to pay a poll tax); Steven Mintz, *Winning the Vote: A History of Voting Rights*, http://www.historynow.org/09_2004/historian1c.html (discussing the use of poll taxes and literacy tests to prevent African Americans from voting).

effort to achieve the goal of selectively deterring voting.[10]

II. ACORN's Successful Voter Registration Efforts Have Drawn False Charges of Fraud.

Many citizens in low-income and minority communities are alienated from the electoral process. As an organization of families in those communities, ACORN conducts grassroots voter registration drives in low-income and minority neighborhoods. In 2004, ACORN's drives yielded 1,131,768 new voters across 105 counties in twenty-six states. In 2006, ACORN workers helped 547,539 citizens register to vote in fifty-three localities in twenty states.

When ACORN embarks on a voter registration effort in a community, it recruits most of its workers from that community, then trains them about the requirements of state and local election law and ACORN's own quality control procedures. The voter registration workers canvas low and middle-income neighborhoods in areas where people congregate, including shopping centers, public transportation centers, universities, and community centers. ACORN workers interview individual registrants to confirm their addresses and to determine if they voted in the last presidential election. If the individuals did not vote in that election, the ACORN workers ask them if they would

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[10] *See* Lorraine C. Minnite, *The Politics of Voter Fraud* 15-17 (Project Vote), *available at* http://projectvote.org/fileadmin/ProjectVote/Publications/Politics_of_Voter_Fraud_Final.pdf.

like to fill out a new registration form. The forms are collected from workers every day and subjected to quality control review by supervisory personnel, which includes telephone calls to voters. Forms that raise any issues during the quality control review are separated for investigation and reported to election and/or law enforcement officials if warranted. The rest are submitted to the state or local election agency.[11]

As with any organization, ACORN is not immune from human error. Of the more than 1.5 million new voter registration forms submitted by ACORN in 2004 and 2006, approximately one-tenth of one percent have been incorrect due to errors by ACORN workers.[12] In no instance has it been demonstrated that an incorrect registration form resulted in a vote being cast by someone impersonating a voter, or even was intended to make that possible.

Because of its effectiveness, ACORN has been targeted for a variety of unfounded charges of voter registration fraud. Increasingly, reports of voter

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[11] *See* Brian Mellor, Voter Registration Quality Control (Project Vote).

[12] In two instances, temporary ACORN workers have pled guilty to creating false registration cards in order to appear to be registering voters when they were not. In one of those situations, ACORN's quality control review caught the false cards. Neither situation involved voter impersonation fraud. Keith Ervin, *Three Plead Guilty in Fake Voter Scheme*, SEATTLE TIMES, Oct. 30, 2007, at B5; Sam Hananel, *Schlozman Resigns From Justice Department Post*, ASSOCIATED PRESS, Aug. 24, 2007.

fraud have been used to generate support for restrictive voting laws which suppress voting by those groups expected to oppose incumbent candidates and parties. This can be seen at the federal level, where high-ranking officials such as Karl Rove have pronounced that voter fraud is an "enormous and growing" problem.[13] With cinematic flourish, Mr. Rove alleged that "in some parts of the country . . . elections [look] like those run in countries where the guys in charge are colonels in mirrored sunglasses."[14] These statements, which have no factual basis, undermine the public's trust in the integrity of elections and drum up support for unwarranted statutes like Indiana's Voter ID Law.

The political use of the voting enforcement process, contrary to the constitutional principles at stake in this case, has included a coordinated effort to spread restrictive statutes like the Indiana Voter ID Law. At the forefront of this effort were the American Center for Voting Rights and the American Center for Voting Rights Legislative Fund (together, "ACVR"), which claimed their mission was to protect the integrity of the election process. Founded in early 2005, AVCR appears to have ceased operations in May 2007, shortly after the press reported that experts hired by a federal study group found little polling place fraud.[15] Although

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[13] Ian Urbina, *Panel Said to Alter Finding on Voter Fraud*, N.Y. TIMES, Apr. 11, 2007.

[14] *Id.*

[15] *Id.* The AVCR website shut down at that time.

ACVR maintained it was non-partisan,[16] its leadership was closely tied to the Republican party.[17]

Purporting to describe alleged voter fraud, including incidents involving ACORN employees, ACVR has been a major source of the voter fraud myth. Yet ACVR's reports have amounted to little more than collages of unsubstantiated allegations,[18] many of which were proved false long before AVCR resurrected them. Despite its rampant inaccuracies, ACVR's disinformation campaign undermined faith in the electoral process and generated support for voter ID laws like Indiana's. Indeed, Indiana's Voter ID Law was adopted while ACVR was actively

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[16] An archived image of ACVR's website is available at http://web.archive.org/web/20050324112315/www.ac4vr.com/about/index.html.

[17] In his article, *The Scales of Justice*, NAT'L J., May 31, 2007, Murray Waas reported that ACVR was founded with the encouragement of Karl Rove and the White House. Mark (Thor) Hearne, who served as ACVR's counsel, was the national election counsel to the Bush-Cheney campaign in 2004 and a delegate to the Republican National Convention. Brian Lunde, ACVR's chairman, ran "Democrats for Bush" in 2004. Robin DeJarnette, ACVR's Executive Director, is the founder and Executive Director of the Virginia Conservative Action PAC.

[18] American Center for Voting Rights Legislative Fund, *Vote Fraud, Intimidation & Suppression in the 2004 Presidential Election* (Jul. 21, 2005) ("*ACVR National Report*"); American Center for Voting Rights, *Ohio Election Activities and Observations: Report to the United States House of Representatives Committee on House Administration* (Mar. 21, 2005) ("*ACVR Ohio Report*").

agitating for such laws,[19] and AVCR defended the statute in an *amicus* brief filed in the court below.

Attempts have also been made to misuse the U.S. Department of Justice ("DOJ") to perpetuate the voter fraud myth. The firings of two United States Attorneys, David Iglesias of New Mexico and John McKay of Washington, were connected to their refusals to prosecute baseless allegations of voter fraud.[20] Mr. Iglesias said that Republican Party officials repeatedly pushed him to prosecute ACORN workers.[21] Yet after reviewing more than 100 complaints of voter fraud, Mr. Iglesias found only one case that he could potentially prosecute; ultimately, he declined to prosecute that case because of "evidentiary problems."[22] In his view, the prosecution would have been based on "political grounds."[23] Nevertheless, an ACVR member pressured Mr. Igelisias several times to bring voter fraud prosecutions where little evidence existed; Mr.

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[19] Around the same time, other state legislatures, including Minnesota, Mississippi, New Hampshire, New Jersey, New Mexico, Virginia, and Washington, introduced photo ID legislation. Ryan Paul Haygood, *State Voter ID Bills Could Derail Civil Rights Successes*, SUN HERALD (Biloxi, MS), May 4, 2005, at C5.

[20] David C. Iglesias, *Why I Was Fired*, N.Y. TIMES, Mar. 21, 2007, at A21; William Yardley, *Gonzales Bowed to Politics, a Former U.S. Attorney Says*, N.Y. TIMES, Mar. 21, 2007, at A16; Christopher Drew & Eric Lipton, *G.O.P. Anger in Swing State Eased Attorney's Exit*, N.Y. TIMES, Mar. 18, 2007, at 1.

[21] Michael Isikoff, *Rove: A Moving Target*, NEWSWEEK, Apr. 9, 2007, at 9.

[22] Iglesias, *supra* note 20.

[23] *Id.*

Igelsias described the ACVR official as "obsessed . . . [and] convinced there was massive voter fraud going on in [New Mexico]."[24]

Likewise, Mr. McKay, whose office reviewed every allegation of voter fraud in the 2004 Washington gubernatorial election, concluded that "that there was no evidence – . . . zero evidence – of election fraud in that election."[25] He said if he had been ordered to pursue criminal indictments for voter fraud, he would have resigned, because he refused to "drag innocent people in front of a grand jury."[26] Mr. McKay faced retaliation for his decision not to prosecute. When interviewed at the White House for a federal judgeship in August 2006, Mr. McKay was questioned about his "mishandling" of the 2004 governor's race.[27] He did not receive the appointment. Three weeks later his name appeared on a list of prosecutors to be dismissed.[28]

In a separate episode, the interim U.S. Attorney in Kansas City, Missouri, Bradley Schlozman, sought the indictment of ACORN workers for submitting false voter registrations just days before the 2006 election, but only after ACORN

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[24] Greg Gordon, *GOP Links to Vote-Fraud Push*, MIAMI HERALD, July 1, 2007, at A3.

[25] Pam Fessler, *Voter Fraud: A Tough Crime to Prove*, National Public Radio, Mar. 15, 2007.

[26] David Bowermaster, *McKay "Stunned" By Report on Bush*, SEATTLE TIMES, Mar. 13, 2007 at A9.

[27] Yardley, *supra* note 20.

[28] *Id.*

fired the workers and reported them to law enforcement officials.[29] Schlozman testified before the U.S. Senate that his superiors had "directed" him to bring the cases prior to the 2006 election.[30] A DOJ official later "clarified" that the decision to seek indictments shortly before an election was Schlozman's and not that of the DOJ staff.[31]

III. ACORN's Experiences, Like the Record in Indiana, Reflect No Systematic Voter Fraud.

The record below reveals no direct evidence of voter impersonation fraud in Indiana.[32] The court of appeals admitted that "not much" voter impersonation has been "found . . . in the states that have been studied" (which do not include Indiana).[33] In support of its empirical guess that voter impersonation fraud justifies deterring low-income citizens from voting, the court below was reduced to scavenging through the record for scraps of facts. That search yielded only "indirect evidence . . . provided by the discrepancy between the number of

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[29] Frank Morris, *Attorneys Scandal May Be Tied to Missouri Voting*, National Public Radio, May 3, 2007.

[30] Letter from Bradley J. Schlozman to Chairman Patrick J. Leahy (June 11, 2007), *available at* http://www.talkingpointsmemo.com/docs/schlozman-clarification/.

[31] Terry Frieden, *Justice Official Revises Testimony in Voter-Fraud Case*, CNN.COM, June 13, 2007.

[32] *See* Brennan Center for Justice at NYU School of Law, Brief of *Amicus Curiae* in Support of Petitioners.

[33] App. 8.

people listed on registered-voter rolls in [Indiana] and the substantially smaller number of people actually eligible to vote."[34]

ACORN's experience confirms that significant voter impersonation fraud is a damaging myth. Despite numerous investigations and lawsuits in Florida and Ohio, all stage-managed by political adversaries, ACORN has never confronted a well-founded allegation of voter impersonation fraud. No voter impersonation fraud has ever been prosecuted, all relevant civil complaints have been dismissed, and problematic voter registrations have been few.[35]

The pattern of these campaigns against voting is depressingly clear. Advocates of shrinking the franchise make headline-grabbing claims of voter fraud in the weeks leading up to close elections in battleground states like Florida and Ohio. Those accusations foster a misguided fear that the electoral process is tainted. Months and years later, the accusations are found groundless, but exonerations do not titillate, so the media either fails to report them or buries them in the back pages. No evidence has linked voter impersonation fraud to the few incorrect voter registrations which arise when millions of people register to vote.

A. Florida

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[34] *Id.* at 8-9.

[35] Eric Lipton & Ian Urbina, *In 5-Year Effort, Scant Evidence of Voter Fraud*, N.Y. TIMES, Apr. 12, 2007, at A1.

In 2004, ACORN successfully supported a popular referendum to raise Florida's minimum wage. During the campaign, ACORN helped 210,700 Floridians register to vote, and in 2006, ACORN helped another 20,665 Florida citizens register. With the apparent goal of suppressing votes from the citizens served by ACORN, some political groups alleged voter registration fraud, which led to criminal investigations, civil litigation, and sensationalized media reports.

On October 21, 2004 – less than two weeks before election day – the Florida Department of Law Enforcement ("FDLE") announced that it had commenced investigations into alleged voting irregularities and that it intended to "combat . . . widespread efforts to commit voter fraud."[36] The FDLE took the highly unusual step of citing ACORN as "[o]ne of the groups whose workers have been connected with the widespread voter irregularities."[37] Fourteen months later – long after the voting was over – the FDLE found no evidence of illegal or fraudulent activity by ACORN.[38]

Two days before the FDLE announced its investigation, lawyers for a discharged ACORN

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[36] Press Release, Fla. Dep't of Law Enforcement, *FDLE Investigates Statewide Voter Fraud* (Oct. 21, 2004).

[37] *Id.*

[38] *Voter Fraud Lawsuits Against ACORN Dismissed*, MIAMI TIMES, Dec. 21, 2005, at 3A; Joni James, *Voter Fraud Charges Collapse*, ST. PETERSBURG TIMES, Dec. 15, 2005, at 1B. The FDLE subpoenaed ACORN on April 15, 2005, seeking employment documents from forty-four employees.

employee, Mac Stuart, filed a whistleblower lawsuit against ACORN.[39] The complaint accused ACORN of numerous illegal practices, including paying workers for each voter registration card collected and failing to deliver the registration cards of people who designated "Republican" as their party affiliation.[40] ACORN denied the charges and countersued for slander and libel.[41] A year later – again, long after the election – Mr. Stuart's attorneys sought permission to withdraw as counsel.[42] On December 6, 2005, the court dismissed Mr. Stuart's case with prejudice and found in favor of ACORN on its counterclaim for defamation.[43] The damage, however, had been done: five months before dismissal, ACVR's report prominently featured Mr. Stuart's case as one of the "top voter fraud registration incidents involving ACORN."[44]

On October 29, 2004 (four days before the election), the same law firm that represented Mr.

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[39] Compl. and Demand for Jury Trial, *Stuart v. Assoc. of Cmty. Orgs. for Reform Now*, No. 04-22074 (Fla. Cir. Ct. Oct. 19, 2004).

[40] *Id.*

[41] Def.'s Answer, Affirmative Defenses and Countercl., *Stuart v. Assoc. of Cmty. Orgs. for Reform Now*, No. 04-22764 (S.D. Fla. Nov. 1, 2004).

[42] Pl.'s Mot. to Withdraw as Counsel, *Stuart*, No. 04-22764 (S.D. Fla. Nov. 1, 2005).

[43] Final Order of Dismissal with Prejudice and J. in Favor of ACORN, *Stuart*, No. 04-22764 (S.D. Fla. Dec. 6, 2005).

[44] *ACVR National Report*, *supra* note 18, at 41.

Stuart filed another suit against ACORN.[45] The plaintiffs were twelve Floridians who claimed that ACORN obstructed their voting rights by failing to submit registration applications to Florida's election supervisors.[46] Within fourteen months, all of the plaintiffs had abandoned the lawsuit.[47]

Other allegations made against ACORN workers in Florida turned out to involve errors or problematic registration applications that ACORN's quality control process had filtered out.[48] The U.S. Attorney in Miami concluded that many vote

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[45] Def.'s Notice of Removal, *Rousseau v. Assoc. of Cmty. Orgs. for Reform Now*, No. 04-61636 (S.D. Fla. Dec. 9, 2004).

[46] *Id.*

[47] Two plaintiffs had cast provisional ballots so could not prove that their votes were uncounted, while one was a convicted felon and therefore could not vote under Florida law. *See* Def.'s Mot. for Summ. J, *Rousseau*, No. 04-61636 (S.D. Fla. Nov. 1, 2005). On November 23, 2005, the court dismissed the case at the parties' request. *See* Final Order of Dismissal with Prejudice as to Specified Pls., *Rousseau*, No. 04-61636 (S.D. Fla. Oct. 14, 2005); Final Order of Dismissal, *Rousseau*, No. 04-61636 (S.D. Fla. Nov. 23, 2005).

[48] For example, the press reported, and ACVR highlighted, that an ACORN employee incorrectly registered former St. Petersburg Mayor Charles Schuh, a 68-year-old Democrat, as a 30-year-old female Republican. An ACORN supervisor had identified the error by calling Mayor Schuh's home, and after correcting the error with the elections office, the Mayor voted without incident. *ACVR National Report*, *supra* note 18, at 42; Tom Zucco, *Signup Mistakes Blamed on Group*, ST. PETERSBURG TIMES, Oct. 4, 2004, at 1B.

irregularities were inadvertent mistakes made by immigrants.[49]

The multi-pronged attack on the integrity of the election system fed the public's apprehension about voter fraud. Six months after the FDLE's investigation closed, ACORN's opponents continued to refer to the FDLE's statements as indicating ACORN's "pattern and practice" of voter fraud.[50] Yet there was none, and certainly no evidence of voter impersonation fraud.

B. Ohio

Ohio figured prominently as a "battleground" state in the 2004 presidential election. ACORN's successful efforts to register Ohioans to vote (189,250 in 2004 and 120,751 in 2006) triggered a barrage of false allegations of voter fraud.

Less than a week before election day, two Ohio residents sued ACORN and others under Ohio's Racketeer Influenced and Corrupt Organizations

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[49] Lipton & Urbina, *supra* note 35. The consequences of such mistakes can be severe: a ten-year resident of Florida was deported to Pakistan for improperly filling out a voter-registration card while renewing his driver's license. *Id.* A recent report concluded that many of the eighty-six people convicted of voter fraud in the past five years by the DOJ appear to have mistakenly filled out registration forms or misunderstood eligibility rules and lacked criminal intent. *Id.*

[50] *See* Employment Policies Institute, *Rotten ACORN: America's Bad Seed*, at 18-19 (July 2006).

Act, for "diluting" their voting rights.[51] They sought treble damages plus attorneys' fees and costs, claiming that "fraudulent voter registration . . . has reached epidemic proportions."[52] Before the first amended complaint was filed, the Free Enterprise Coalition (an organization linked to ACVR) agreed to pay the plaintiffs' legal fees.[53] A year later, the plaintiffs unilaterally withdrew their action[54] but not before ACVR featured the suit in its Ohio report as still more false evidence of "rampant registration fraud."[55]

Federal, state, and local investigators in Ohio also alleged voter fraud against ACORN. ACVR sent

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[51] Compl. and Jury Demand, *Rubick v. America Coming Together*, No. 04 CV 650 (Court of Common Pleas, Woof County, Ohio, Oct. 29, 2004); First Amended Compl., *Rubick*, No. 04 CV 650 (Court of Common Pleas, Woof County, Ohio, Dec. 17, 2004). Because RICO violations carry high penalties, including treble damages, RICO claims are sometimes used to chill legitimate activities. *Nat'l Org. for Women v. Scheidler*, 510 U.S. 249, 265 (1994) (Souter, J., concurring) (noting that "RICO actions could deter protected advocacy").

[52] First Amended Complaint, at 6, *Rubick*, No. 04 CV 650.

[53] *See* Letter from Mark Rubick to Douglas Haynam (Oct. 26, 2004); Letter from Jamey Koralewski to Douglas Haynam (Oct. 26, 2004). Alex Vogel, an authorized representative of the Free Enterprise Coalition, signed the letters. He also served on ACVR's initial board of directors. Additionally, Mr. Vogel has worked in several branches of the Republican party, including the Republican National Committee and the National Republican Senatorial Committee.

[54] Notice of Dismissal Without Prejudice, *Rubick*, No. 04 CV 650 (Court of Common Pleas, Woof County, Ohio, Oct. 31, 2005).

[55] *ACVR Ohio Report*, *supra* note 18, at 12.

a letter to the DOJ claiming "serious violation of federal law" by ACORN in Ohio,[56] while press reports announced that election boards throughout the state received hundreds of fraudulent voter registrations.[57] ACORN cooperated with investigators, producing thousands of documents in response to subpoenas. A year later the U.S. Attorney's Office in Cleveland closed its investigation without filing any charges.[58]

Most allegations directed at ACORN in Ohio were simply false. In Franklin County, for example, ACVR alleged that "ACORN Registrations Include[d] . . . [a] Suspected Terrorist," Nuradin Abdi, but the Franklin County Elections Director said that Abdi's 1999 voter registration appears to have been taken by the Ohio Bureau of Motor Vehicles, not by ACORN workers.[59]

A few allegations in Ohio concerned isolated incidents of incorrectly completed registration cards. For example, the Director of the Franklin County Board of Elections ("BOE") informed ACORN of two

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[56] *ACVR Refers Ohio Voter Fraud Report to Department of Justice*, PR NEWSWIRE, Mar. 24, 2005.

[57] *See, e.g.*, WBNS-TV, *Election Fraud Cases Under Review*, Oct. 22, 2004; *Voter Registration Investigation One of Largest in Recent Years*, ASSOCIATED PRESS, Sept. 23, 2004.

[58] Lisa A. Abraham, *Voter Fraud Investigation Nets 1 Arrest*, BEACON J., Nov. 8, 2005.

[59] *AVCR Ohio Report*, *supra* note 18, at 60; Jon Craig, *Magazine Inaccurately Uses "Dispatch" Material in Story*, COLUMBUS DISPATCH, Oct. 26, 2004, at 4B.

false registration forms submitted by ACORN.[60] ACORN dismissed the two responsible workers before the BOE reported the incident to the press.[61] In Hamilton County, of over 68,000 new registration cards submitted, nineteen turned out to be incorrect.[62] With no evidence of voter impersonation fraud, such isolated errors are a far cry from the "significant problem"[63] described by ACVR or by the state of Indiana in this case.

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[60] *ACVR National Report*, *supra* note 18, at 60.

[61] Robert Vitale, *Two Fired Over Bogus Voter-Registration Forms*, COLUMBUS DISPATCH, June 3, 2004, at 4D; Robert Vitale, *Made-Up People*, COLUMBUS DISPATCH, June 2, 2004, at 1A. Subsequently, ACORN implemented a new computer system to verify the accuracy of registration cards.

[62] Cindi Andrews, *Alleged Fraudulent Voter Cards Scrutinized*, CINCINNATI ENQUIRER, Oct. 8, 2004, at 1C; *ACVR National Report*, *supra* note 18, at 60.

[63] *Id.* at 8.

CONCLUSION

For the foregoing reasons and those explained in the briefs of petitioners and their supporting *amici,* this Court should conclude that the Indiana Voter ID Law cannot be justified on the basis of the Indiana legislature's empirical guess that voter impersonation fraud occurs.

Respectfully submitted,

STEVE BACHMANN
BRIAN MELLOR
ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW
1024 Elysian Fields Avenue
New Orleans, LA 70117
(504) 943-0044

DAVID OVERLOCK STEWART
Counsel of Record
ROPES & GRAY LLP
700 12th Street N.W.
Suite 900
Washington, D.C. 20005
(202) 508-4600

CAITLIN M. MOYNA
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036
(212) 596-9000
Counsel for Amicus Curiae

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